

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

JAMES D. JOHNSON, et al.

PLAINTIFFS

vs.

CIVIL ACTION NO. 3:04cv251LN

HALEY BARBOUR, et al.

DEFENDANTS

**DEFENDANTS' MEMORANDUM RESPONSE TO PLAINTIFFS' MOTION TO
COMPEL DOCUMENTS RESPONSIVE TO PLAINTIFFS' FIRST AND FIFTH
REQUESTS FOR PRODUCTION OF DOCUMENTS AND FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AS TO EXPERTS**

COME NOW, the Defendants Haley Barbour, Donald Taylor, and Rickie Felder, by and through counsel, and file their Response to Plaintiffs' Motion to Compel Documents Responsive to Plaintiffs' First and Fifth Requests for Production of Documents and First Request for Production of Documents as to Experts, and without waiving any previous objections, would show unto the Court the following:

1.

Defendants request that the Court waive the requirement of Local Rule 7.2(D) for a separate Memorandum of Authorities, and accept this, Defendants' Response to Plaintiffs' Motion to Compel Documents Responsive to Plaintiffs' First and Fifth Requests for Production of Documents and First Request for Production of Documents as to Experts, in its place.

2.

Plaintiffs have filed an untimely Motion to Compel against Defendants in violation of Rule 7.2 (B) (2) of the Uniform Local Rules of the United States District Courts for the Northern

and Southern Districts of Mississippi which provides that “Discovery motions must be filed sufficiently in advance of the discovery deadline so as to not affect the deadline”.

3.

On April 17, 2006, Plaintiffs filed their Motion to Compel against the Defendants. April 17, 2006, was the discovery deadline in this case as provided by the January 17, 2006 Amended Case Management Order (See “Exhibit A” attached).

4.

Plaintiffs’ First Request for Production of Documents was filed on December 17, 2004, and Plaintiffs’ Fifth Request for Production was filed on April 20, 2005. Following Defendants’ initial responses to Plaintiffs’ First and Fifth Requests for Production of Documents, Defendants filed quarterly supplemental responses to each. Plaintiffs had months to file a Motion to Compel regarding any outstanding discovery issues. Instead, Plaintiffs’ counsel chose to wait to file such a motion until the day discovery concluded. This is simply a tactic by Plaintiffs’ counsel to continue discovery beyond the deadline while maintaining the same trial date so that Defendants are overburdened with document productions during the three (3) months left to prepare for trial.

5.

Plaintiffs Motion to Compel is moot as dispositive motions have already been filed by both Plaintiffs and Defendants.

6.

Defendants object to the production of any documents requested in the Plaintiffs Motion to Compel. However, without waiving any objections, Defendants will address the documents compelled by this Court per its July 18, 2005 order.

7.

Plaintiffs allege that Defendants have not produced all documents compelled by the July 18, 2005, court order as related to the production of e-mails or digital communications by failing to do a search for responsive e-mails. As to e-mails or digital communications, the Court's July 18, 2005, order states as follows: "The Defendants have responded to this Request by stating that DHS case workers do not have e-mail, but some state office employees do. They have offered to produce any responsive e-mails or other digital communications, and the Motion to Compel will be granted to this Request." (See "Exhibit B" attached). Counsel for Defendants have requested that Defendants locate and produce any and all responsive e-mails and other digital communications for each request for production of documents. As a result, Defendants have turned over numerous e-mails. Defendants have produced all responsive e-mails or digital communications, and are hence in compliance with the Court's July 18, 2005 order.

8.

Defendants have consistently been burdened by the rigors of massive document productions since December 17, 2004, and numerous depositions. Defendants have diligently pursued any and all responsive documents, and as a result produced over 225,000 pages of documents to Plaintiffs' counsel. Plaintiffs' motion should be denied as it is untimely and would affect the discovery deadline in violation of Local Rule 7.2 (B) (2).

WHEREFORE PREMISES CONSIDRED, Defendants respectfully request that Plaintiffs' Motion to Compel Documents Responsive to Plaintiffs' First and Fifth Requests for Production of Documents and First Request for Production of Documents as to Experts is denied.

This, the **3rd** day of **May**, **2006**.

Respectfully Submitted,

HALEY BARBOUR, as Governor of the State of Mississippi; **DONALD TAYLOR**, as Executive Director of the Department of Human Services; and **RICKIE FELDER**, as Director of the Division of Family and Children's Services

BY: /s/ Kenya Key Rachal (MSB #99227)

OF COUNSEL:

Attorney General Jim Hood
State of Mississippi
P.O. Box 220
Jackson, MS 39205-0220

**BAKER, DONELSON, BEARMAN, CALDWELL,
AND BERKOWITZ, PC**

Dewitt L. ("Rusty") Fortenberry, Jr. (MSB #5435)
Kenya Key Rachal (MSB#99227)
Gretchen L. Zmitrovich (MSB #101470)
Ashley Tullos Young (MSB #101839)
4268 I-55 North
Meadowbrook Office Park
Post Office Box 14167 (39236)
Jackson, Mississippi 39211
Telephone: (601) 351-2400
Facsimile: (601) 351-2424

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

W. Wayne Drinkwater, Jr. Esq.
Melody McAnally, Esq.
BRADLEY ARANT ROSE & WHITE LLP
Suite 450, One Jackson Place
Post Office Box 1789
Jackson, MS 39215

Stephen H. Leech, Esq.
850 East River Place, Suite 300
Jackson, Mississippi 39215

Eric E. Thompson, Esq.
CHILDREN'S RIGHTS, INC.
330 Seventh Avenue, 4th Floor
New York, New York 10001

Harold E. Pizzetta, III
Special Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 220
Jackson, MS 39205

I also certify that I have this day served a copy of the foregoing on the following non-ECF participants by United States Mail, postage prepaid:

Marcia Robinson Lowry, Esq.
Susan Lambiase, Esq.
Shirim Nothenberg
Tara Crean, Esq.
CHILDREN'S RIGHTS, INC.
330 Seventh Avenue, 4th Floor
New York, New York 10001

Eric S. Manne, Esq.
John Piskora, Esq.
LOEB & LOEB, LLP
345 Park Avenue
New York, NY 10154

SO CERTIFIED, this the **3rd** day of **May, 2006**.

/s/ Kenya Key Rachal
(MS Bar #99227)